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Abstract: There is an increasing recognition of the need to provide ways for people to raise concerns about suspected wrongdoing by promoting internal policies and procedures which offer proper safeguards to actual and potential whistleblowers. Many organisations in both the public and private sectors now have such measures and these display a wide variety of operating modalities: in-house or outsourced, anonymous/confidential/ identified, multi or single tiered, specified or open subject matter etc. As a result of this development, a number of guidelines and policy documents have been produced by authoritative bodies. This article reviews the following five documents from a management perspective, the first two deal with the principles upon which legislation might be based and the others describing good management practice: the Council of Europe Resolution 1729 (COER); Transparency International 'Recommended Principles for Whistleblowing Legislation' (TI); European Union Article 29 Data Protection Working Party Opinion (EUWP); International Chamber of Commerce 'Guidelines on Whistleblowing' (ICC); and the British Standards Institute 'Whistleblowing arrangements Code of Practice 2008 (BSI).

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THE CONTENT OF WHISTLEBLOWING PROCEDURES: A CRITICAL REVIEW OF RECENT OFFICIAL GUIDELINES.

ABSTRACT

There is an increasing recognition of the need to provide ways for people to raise concerns about suspected wrongdoing by promoting internal policies and procedures which offer proper safeguards to actual and potential whistleblowers. Many organisations in both the public and private sectors now have such measures and these display a wide variety of operating modalities: in-house or outsourced, anonymous/confidential/ identified, multi or single tiered, specified or open subject matter etc. As a result of this development, a number of guidelines and policy documents have been produced by authoritative bodies. This article reviews the following five documents from a management perspective, the first two deal with the principles upon which legislation might be based and the others describing good management practice: the Council of Europe Resolution 1729 (COER); Transparency International 'Recommended Principles for Whistleblowing Legislation' (TI); European Union Article 29 Data Protection Working Party Opinion (EUWP); International Chamber of Commerce 'Guidelines on Whistleblowing' (ICC); and the British Standards Institute 'Whistleblowing arrangements Code of Practice 2008 (BSI).

SECTION 1: INTRODUCTION

Academic research on whistleblowing has been undertaken since the 1980's. The vast majority of this research has concentrated on the person raising concerns in an attempt to identify a psychological or sociological profile of the whistleblower (see Miceli, Near, &

Dworkin, 2008 for the latest meta study), or identify the organisational conditions that lead to external reporting (see for example Keenan, 1995; Rothschild & Miethe, 1999). Cross-cultural research has mainly analysed stated intentions to report wrongdoing (e.g. Keenan, 2007; MacNab et al, 2007). Whilst acknowledging the importance and impact this research has had on the way we view the whistleblower (a hero or a villain, or simply someone taking their job responsibilities seriously) and hence on the public and legislative discourse around protection, this article explores the 'management side of whistleblowing'. Questions relating to the design and implementation of internal whistleblowing policies/procedures have become urgent, as many corporate governance codes around the world today prescribe whistleblowing policies/procedures as part of best practice. However, corporate governance principles or regulations do not prescribe in detail how such internal whistleblowing provisions ought to be designed and implemented. Responding to the need for some guidance on this, a number of authoritative bodies have issued guidance on internal whistleblowing policies/procedures. This article describes the content of recent guidelines and comments on their implications for the design and implementation of whistleblowing policies and procedures.

We draw on the existing literature to develop a framework and then use structured content and documentary analysis techniques to critically review the following five guidelines about how to manage whistleblowing: the Council of Europe Resolution 1729 (COER, 2010); Transparency International 'Recommended Principles for Whistleblowing Legislation' (TI, 2009); the British Standards Institute 'PAS 1998:2008 Whistleblowing arrangements Code of Practice' (BSI, 2008); ICC 'Guidelines on Whistleblowing' (ICC, 2008); and the EU Article 29 Data Protection Working Party Opinion (EUWP, 2006). It should be noted that the first two focus on the principles on which legislation might be based and the others describe good management practice. The remainder of the article consists of the following: Section two

describes the framework used for our review; Section three offers a comparison; Section four comments on the gaps and contradictions identified in the previous section and Section five offers some general conclusions.

SECTION 2: FRAMEWORK

A structured content analysis draws relevant information from published material and a key feature is that 'only specific information sought by the researcher is coded' (Jauch, Osborn, & Martin, 1980: 517). Hence, this section develops the framework through which the five guidelines will be analysed. However, whereas structured content analysis is used to quantify written data sources (Jauch et al, 1980; Larsson, 1993), our intention is to critically compare the guidelines on specific aspects of whistleblowing policies/procedures. Thus, we use structured content analysis only to the point where we can establish policy categories in the guidelines. Rather than drawing categories from multiple readings of our data, we develop our framework from the existing literature on the management side of whistleblowing. We employ documentary analysis to identify the extent to which the guidelines converge or contradict each other in particular policy areas. Finally, we try to explain contradictions and gaps by looking at specific document characteristics such as: who wrote it, for whom, and why.

From the literature, we have discerned 16 policy issues and these constitute our framework. These were either repeatedly identified in the normative literature as being important elements of a fair or efficient whistleblowing procedure/policy, or they featured as a variable in research on whistleblowing in more than one study. We now briefly discuss these 16 categories.

Who can blow the whistle? Hassink et al (2007) analysed the content of whistleblowing policies at 56 leading European companies and recorded the incidence of statements indicating that all employees, the entire group, contractors, and former employees could use the procedure. In researching whistleblowing procedures in higher education institutions and local authorities, Lewis (2006) also included students, members of the public, suppliers, councillors, and the self-employed. In their survey of whistleblowing procedures in the UK's top 250 FTSE firms, (Lewis & Kender, 2007, 2010) draw on the broad definition of 'worker' in the UK Public Interest Disclosure Act 1998 and consider the issue of who can use a whistleblowing procedure to be crucial .

What issues should be covered? Vandekerckhove (2006) traces how the process of policy formulation through successive Parliamentary Bills and position statements from lobbying groups has limited the types of wrongdoing that qualify as protected disclosures and considers this narrowing to be an ethical risk. In reporting on research in the Australian public sector, Roberts (2008) finds that the acceptance that a broad spectrum of concerns should fall within the scope of a procedure leads to better outcomes i.e. the wrongdoing gets corrected and the whistleblower does not experience unfair treatment. Other research also measures this variable (Hassink et al, 2007; Lewis 2006; Lewis & Kender 2007, 2010).

To whom can one raise a concern? Vandekerckhove (2006) advocates whistleblowing legislation that would protect whistleblowers when they disclose to the media. He elaborates this position by developing a three-tiered approach which draws on existing legislation, research from the whistleblower perspective and the evolution of the public debate about protection (2010b). According to his model, a whistleblower should first raise a concern inside the organisation. The second tier consists of institutions that have controlling power over first tier bodies and are mandated as proxies of society (regulators, or parliamentary ombudspersons). Finally, a third tier disclosure is to the public, for example through the

media. The rationale of the model is that each successive tier holds the previous one accountable for dealing appropriately with both the concern raised and the person raising it. Since this accountability requires all three tiers to be available, the absence of any one of them undermines the ability of procedures to generate positive outcomes. The importance of specifying in a policy/procedure to whom whistleblowers can raise their concern is confirmed by empirical research. Hassink et al (2007) found internal whistleblowing policies/procedures identified 20 different recipients within organisations with whom concerns could be raised. Lewis (2006) and Lewis and Kender (2007, 2010) recorded the extent to which whistleblowing procedures also identify an external recipient to whom individuals can take their concern should raising the matter internally prove unsatisfactory. Brown (2008) found that identifying both internal and external recipients leads to better whistleblowing outcomes.

How should one raise a concern – in-house, outsourced? As private sector companies began to design and implement internal whistleblowing policies/procedures, a number of auditing companies developed whistleblowing 'hotlines' as a business to business service. Whereas public sector organisations tend to operate whistleblowing procedures themselves or through a specialist public sector body (which can still be considered in-house), private companies might want to outsource this. Because employee trust in a whistleblowing procedure is regarded as an important factor affecting its use (Miceli et al, 2008), we include the in-house versus outsourced operation of whistleblowing procedures as part of our framework. Lewis and Kender (2007, 2010) and Brown and Olsen (2008) have also examined this issue in their research.

Two other important aspects of whistleblowing policies/procedures involve the question of *how* concerns must be raised. The first regards the *report mode:* should concerns be raised in written or oral form and must this be done in person or via 'hotlines'? The second issue is

whether concerns can be raised *confidentially or also anonymously.* Vandekerckhove (2010a) points out there is an ongoing debate about the latter. The possibility of anonymous reporting might make it easier for individuals to raise an issue but confidential reporting (where the identity of the whistleblower is known only to the recipient) facilitates investigations. Park, Blenkinsopp, Oktem and Omurgonulsen (2008) found that respondents in the UK, Turkey and South Korea showed a preference for blowing the whistle anonymously through internal and formal procedures. Hassink et al (2007), Lewis (2006), and Lewis and Kender (2007, 2010) deemed these aspects important enough to treat them as variables in their research.

A further category is *what system is used for recording and tracking reports*. Are concerns logged centrally even when they are resolved locally, is there a company-wide database? Brown and Wheeler (2008) suggest this is crucial for effective whistleblowing procedures and have included it in their 'agenda for action'.

Is whistleblowing a right or a duty? Vandekerckhove (2006, 2010a) suggests that there is a tendency in whistleblowing legislation and policies/procedures to institutionalise the employee as the guardian of organisational legitimacy, with the consequence that whistleblowing risks being perceived as a duty rather than a right that needs to be protected. Hassink et al (2007) found that a substantial number of internal whistleblowing policies used wording which suggested that raising a concern is compulsory and employees might be held accountable for failing to do doing so. Tsahuridu and Vandekerckhove (2008) and Vandekerckhove and Tsahuridu (2010) have further theorised on this.

Whistleblowing legislation is designed to protect whistleblowers from various forms of reprisal under specified conditions. One aim of internal whistleblowing policies/procedures might be to avoid corporate liability for dealing inadequately with whistleblowers by providing internal routes for raising concerns. Hence, one aspect of our framework is whether or not explicit mention is made of *retaliation/reprisals or the protection of internal*

whistleblowers. This is also one of the points on the 'agenda for action' identified by Brown and Wheeler (2008) and it has been taken up in various empirical research (Hassink et al, 2007; Lewis, 2006; Lewis & Kender, 2007, 2010; Roberts, 2008).

A perennial issue is the motive of the whistleblower.Vandekerckhove (2006) discovered that in nearly all debates about whether or not to have a whistleblowing policy/procedure, the argument was made that employees would abuse the facility. A proper motive is often a key element for courts in deciding whether or not to protect a whistleblower. However, Vandekerckhove (2010a) points out that it is not clear why whistleblowers disclosing accurate information about wrongdoing with a personal rather than a public interest motive ought not to be protected or listened to. In their research Lewis (2006) and Lewis and Kender (2007, 2010) examined whether procedures included the requirement of good faith and whether they mentioned that malicious reporting might result in disciplinary action. Hence, we include *requiring good faith /dealing with malicious reporting* as a category in our framework.

Connected to this is the issue of *rewarding the whistleblower*. Miceli and Near (1992) commented that the US False Claims Act 1989,which offers whistleblowers a percentage of what the government is able to recover on frauds as a result of the information the whistleblower has provided, introduced a new approach in which information took priority over motivation. More recently, Carson, Verdu, and Wokutch (2008) have provided ethical arguments in favour of rewarding whistleblowers. Vandekerckhove (2010a) discusses rewarding whistleblowers as an ongoing theme.

Finally, we include five matters that relate to the institutional context of internal whistleblowing. Vandekerckhove (2006) found that, with the exception of the Netherlands and Canada, labour unions had not been demanding better whistleblower protection. In France and Germany, unions have taken corporations to court over the introduction of

whistleblowing policies/procedures, arguing that they were unlawful and certainly not welcoming them. However, Vandekerckhove (2006) and Lewis (2006) suggest unions have a positive role to play in designing and implementing whistleblowing procedures. Lewis and Kender (2007, 2010) recorded the extent to which unions are involved in this way. Skyvenes and Trygstad (2010), in research on the prevalence of whistleblowing in Norway, have explained the high percentage of successful and unproblematic internal whistleblowing they found as being facilitated by the high level of unionisation. Hence, *involvement of labour unions or other stakeholders* is included as part of our framework.

A number of authors indicate that providing *independent advice to whistleblowers* is an important aspect of fair and effective whistleblowing procedures (Vandekerckhove, 2006, Brown & Olsen, 2008, Brown & Wheeler, 2008). Lewis (2006) and Lewis and Kender (2007, 2010) researching in the UK, have measured the extent to which whistleblowing policies /procesdures made reference to independent advice from Public Concern at Work or other bodies. Any whistleblowing policy/procedure will identify certain key players for its implementation, along with a specification of their *roles and responsibilities.* Who investigates concerns, who has operational responsibilities? As Lewis (2006) and Roberts (2008) show, there are many possible permutations here so we will scrutinise the guidelines in relation to these issues.

As with all policies and procedures, *whistleblowing policies/ procedures need to be monitored and reviewed*. Lewis (2006) and Lewis and Kender (2007, 2010) have examined to what extent and how existing whistleblowing procedures provide for monitoring and review and who conducts them. Last but not least, whistleblowing outcomes depend on how people react when a concern is raised. Hence, as Brown and Wheeler (2008) point out, we should expect procedures/policies to be complemented by *training for those receiving and*

responding to reports. Lewis (2006) and Lewis and Kender (2007, 2010) have researched to what extent this is the case in the UK.

SECTION 3: COMPARING THE FIVE GUIDELINES

This section compares the guidelines using the framework developed in section two. Table 1 provides a synoptic overview of the comparison, and indicates the level of agreement. Where guidelines mentioning a particular aspect use different wording but amount to the same advice, the status is shown as 'consensus'. If guidelines give different yet compatible advice, we describe this as 'convergence'. When guidelines offer contradictory advice we classify them as 'incompatible'. However, this classification does not take into account the gaps in some of the guidelines on important aspects of a whistleblowing policy/procedure. Such omissions will be commented on in section four.

The guidelines vary in specifying what kind of concerns whistleblowers should be allowed to raise. TI, ICC, and BSI differ slightly in wording but all three offer a broad delineation of subjects. However, the EUWP guideline requires the issue to be serious enough for whistleblowing to be a legitimate way of creating awareness of types of financial malpractice. This reflects the fact that whistleblowing has increasingly been seen as a useful tool in the fight against fraud and corruption (Vandekerckhove, 2006; Carr & Lewis, 2010). As regards the distinction between raising a grievance and a concern about wrongdoing, the BSI Code suggests that the former has no public interest dimension. Although there are frequent attempts to distinguish whistleblowing from the making of a self-interested complaint, we would argue that it is not necessarily true that those who report wrongdoing are not directly or personally affected. Significantly, the Advisory Conciliation and Arbitration Service

(ACAS) recognises that potential problems can arise from procedural overlap and in their Foreword to the latest Code of Practice on Disciplinary and Grievance Procedures 2009 it is stated that "Organisations may wish to consider dealing with issues involving bullying, harassment or whistleblowing under a separate procedure" (ACAS, 2009: 2).

There are only limited differences in relation to whether or not whistleblowing ought to be confidential rather than anonymous. ICC takes no position while TI states that both types of reporting must be available. BSI advises that concerns are best raised openly i.e. neither confidential nor anonymous. However, it acknowledges that in practice circumstances might not make that a feasible option so it is recommended that confidential channels should also be put in place. Indeed, even full confidentiality will be subject to exceptions, for example, where the discloser may have to be identified for disciplinary purposes or to report suspected wrongdoing to the police or a Regulator. BSI does not advise against anonymous reporting but suggests that workers should not be actively encouraged to go down this path. The EUWP guideline is similar to BSI i.e. schemes should not advertise nor encourage anonymous disclosures but these may be accepted. The COER acknowledges that confidential disclosures fuel less mistrust than anonymous ones and suggests that the identity of a whistleblower should only be revealed with his or her consent "or in order to avert serious and imminent threats to the public interest" (COER, 2010: para 6.2.1.2).

All the guidelines emphasise the importance of offering adequate protection to whistleblowers. In particular, COER highlights the danger of "offering a 'shield of cardboard' which would entrap them by giving them a false sense of security" (para 5). Thus attention is drawn to the need to deal with any form of retaliation. In addition, mention is made of exposing those who undertake reprisals to counter –claims from the victim "with the intention of having them removed from office or otherwise sanctioned" (para 6.2.6). In practice, this will simply mean that employers should add the victimisation of whistleblowers

to the list of matters that will be regarded as serious misconduct and dealt with firmly under the disciplinary procedure.

The five guidelines indicate that the making of a knowingly false report should lead to disciplinary action. However, they differ in terms of how they describe the 'good faith' needed for whistleblowers to be protected. EUWP states the whistleblower's identity may be disclosed when a report is both false and maliciously made. ICC requires a whistleblower to be *bona fide* while TI explicitly limits 'good faith' to the honest belief that the information is true at the time of disclosure, regardless of the whistleblower's motive. By way of contrast, COER states that the 'good faith' requirement will be satisfied if "he or she had reasonable grounds to believe that the information disclosed was true [...] provided her or she did not pursue any unlawful or unethical objectives" (COER, 2010: para 6.2.4). It almost goes without saying that employers would be ill–advised to include such a caveat without specifying what will be treated as unlawful or unethical objectives. Apart from the practical difficulties involved in trying to establish a person's motives or objectives, we would argue that they are irrelevant where the discloser has reasonable grounds to believe that the information is true. Related to this is the importance of offering rights to a person who is wrongly suspected of malpractice and this is a matter emphasised by ICC, COER and EUWP.

Without actually contradicting each other, the guidelines offer very different advice about which stakeholders to include in the process of establishing whistleblowing schemes. EUWP states that national data protection authorities should formally endorse the policy. BSI advises employers to consult on the arrangements with staff, managers and recognised trade unions. The authors of this article believe that consultation and negotiation are not only vital as a matter of principle but that they will also be particularly important in trying to deal with the problem of procedural overlap i.e. to identify the precise circumstances in which grievance, whistleblowing, bullying\harassment and disciplinary procedures can be invoked. Provisions

for monitoring and review are also important. For example,, in the UK if a procedure is defective it may be easier to persuade an employment tribunal that an external disclosure was reasonable under Section 43G and 43H ERA 1996. BSI and TI advise the inclusion of relevant stakeholders in monitoring and reviewing the whistleblowing scheme. Additionally, the BSI guideline specifies what the review should focus on[1] and urges that the key findings should be communicated to staff.

There is a basic consensus on the extent to which concerns about wrongdoing should be recorded and filed but different emphasis is placed by the respective guidelines. The ICC is straightforward in stating that all reports should be acknowledged, recorded, and screened. EUWP strongly advises that personal data should be kept separate from reports of alleged wrongdoing and that personal data should not be kept longer than necessary. BSI makes reference to the EUWP view on this matter but adds that only those who receive a concern outside of line management should keep records and log them centrally. As we argue below, the variations noted here are connected to the different approaches taken in the guidelines to training and who should have responsibility for whistleblowing measures.

The issue of rewarding whistleblowers is a highly contentious one yet the guidelines under consideration differ only slightly in their approaches. TI states that it depends on the context whether or not rewards should be used and does not rule out schemes which offer financial incentives for people to raise concerns. BSI suggests that rewards should not be offered in a policy but should be left to the discretion of the Board. In this respect it is worth noting that in the UK Sections 43G and 43H ERA 1996 do not protect disclosures that have been made for personal gain. By way of contrast, it is generally acknowledged that the system of

[1] Para 6.1 recommends that a review should consider the following four elements: "(i) Ensure that staff are aware of and trust the whistleblowing avenues;(ii) Make provision for realistic advice about what the whistleblowing process means for openness, confidentiality and anonymity;(iii) Continually review how the procedures work in practice;(iv) Regular communication to staff about the avenues open to them."

allowing qui tam suits under the US False Claim Act 1989, which allows citizens to get 15-25% of sums recovered by the Government, is regarded as being highly successful.[2]

On other matters the guidelines are less compatible with each other. TI, COER, ICC and BSI all broadly describe who can blow the whistle. Indeed, TI suggests that concerns about national security should be catered for and COER recommends that members of the armed forces and special services should be covered. At the other extreme, we find it rather strange that EUWP suggests that it might be appropriate to limit the number of persons eligible to report (and the number who may be incriminated). Interestingly, ICC suggests that customers might be covered by a whistleblowing procedure while the BSI advises against extending such a scheme to members of the public or consumers. In this regard, we would point to the research conducted in the UK which shows that many public sector employers have procedures which recognise that customers and users of services may well be a valuable source of information about suspected wrongdoing (Lewis, 2006).

The guidelines vary substantially in the modes of reporting they recommend. ICC leaves it up to each individual enterprise to define the kind of communication channels it wants to use. On the other hand, BSI expressly states that employees should be encouraged to raise concerns verbally. Their reasoning being that most concerns are raised orally so it would be counter-productive to require employees to submit them in writing. Nevertheless BSI suggests that a record should be kept of key details and a copy given to the worker where the procedure is invoked. It is recommended that those outside line management should have records that are logged centrally and it goes without saying that these must comply with the

[2] Between 1986 and 2007, the equivalent of £5.6 million was awarded in judgments.

principles contained in Schedule 1 of the Data Protection Act 1998.[3] However, as EUWP observed, a balance has to be struck between the rights of whistleblowers and data subjects and the organisation's need to investigate allegations of wrongdoing.

There are differences about whether whistleblowing should be regarded as a right (voluntary) or a duty (compulsory). The ICC leaves this to each individual enterprise to decide. While the BSI recognises that in certain circumstances people have a statutory obligation to disclose information, it explicitly advises against making it a requirement that employees blow the whistle. Good management practice and UK employment law[4] demand that if a contractual duty is imposed it should be enforced consistently. Thus if one person raised a concern but others who knew about the matter did not, questions would need to be asked. However, many employers would not regard such an investigation as being either conducive to good industrial relations or a particularly sensible use of resources.

There is disagreement about who should have responsibility for operating whistleblowing policies/ procedures. BSI states that every manager has a role to play in a whistleblowing scheme and advises that employees should be encouraged to raise concerns with their line manager first. However, EUWP states that there should be a specific organisational unit within the company or the group dedicated to handling whistleblower's reports and this should be strictly separated from other departments such as human resources. TI suggests that there should be an independent body receiving complaints about retaliation. The ICC recommends that senior personnel be in charge of the whistleblowing unit, whereas the BSI

[3] For example, Principle 4: "Personal data shall be accurate and, where necessary, kept up to date" and Principle 5: "Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or purposes".

[4] Arbitrary, capricious or unreasonable behaviour may undermine the common law implied duty of trust and confidence found in contracts of employment.

does not advise a separate unit but suggests that overall responsibility should be taken at a high level with the organisation.

The approach of the guidelines to training is consistent with the levels of responsibility described above. Because BSI sees an important role for line managers in whistleblowing procedures, it advises that all managers should be briefed on how to handle cases. Additionally, those with a specific role in the whistleblowing arrangements should be trained in the operation of the procedure. On the other hand, because it recommends that a whistleblowing procedure should be operated by a specific organisational unit, EUWP only sees training as necessary for people in that specialist unit. Worryingly absent from most of the guidelines under discussion is mention of the need to train workers in how to invoke a whistleblowing procedure.[5]

SECTION 4: GAPS IN THE GUIDELINES

From the synoptic overview in table 1, it can be seen that the BSI guidelines cover the full range of issues we deem to be important in managing whistleblowing but all the others have gaps. This might be for a variety of reasons and this section speculates about why there are omissions.

Our assumption is that if an issue is regarded as important by the drafting body then a position on it will be taken in the guideline. We identify four reasons why an issue might not be perceived to be important: 1) it is not seen as relevant for the target audience, 2) a position on the particular matter is thought to be obvious given that taken elsewhere, 3) a particular

[5] BSI refers to the training of senior managers and advocates that workers should be briefed by line managers when the policy is introduced or changed. By way of contrast, the Institute of Chartered Accountants acknowledges the need to educate staff about the whistleblowing policy and train them how to raise and handle concerns (ICA 2004).

stance is thought to be common sense and therefore does not need to be articulated, 4) the drafters mistakenly regarded the issue as unimportant or simply forgot it. We discuss below the types of gap that emerge from our comparative analysis.

A first pattern reflects the historical evolution of whistleblowing activism and research. As mentioned in our introduction, there has been much attention focussed on the whistleblower and there is relatively little on how to manage whistleblowing, i.e. how to organise and respond to it. The elements in our framework on which all of the guidelines take a position relate to the whistleblower. These are: who can blow the whistle, the requirement of good faith, confidentiality, protection, and the nature of the concerns that can be raised. The first two deal with the kind of whistleblower we want to encourage and the others deal with protecting the whistleblower. In our view, the gaps in the guidelines demonstrate that the management of whistleblowing beyond the whistleblower is still at a formative stage, i.e. we do not seem to be addressing the added value of whistleblowing in terms of risk management and organisational learning.

A second pattern is where both the COER and the TI guidelines have omissions. These are whether to operate a whistleblowing procedure in-house or outsource it, how to record reports, whether whistleblowing should be compulsory or not, the involvement trade unions or other stakeholders, and the provision of training. This constitutes a pattern because both of these guidelines have omissions in six areas, although there are only two instances where COER has a gap but not TI. An obvious explanation for this is that the COER and TI guidelines focus on how to develop whistleblowing legislation, whereas the others are targeted at organisations. In this sense, the gaps relate to matters which the COER and TI did not believe needed to be resolved. On the mode of reporting, the EUWP guideline is also silent. The most probable explanation for this is that its position is implied from the context. More precisely, as the EUWP is concerned with making whistleblowing policies/procedures

compliant with privacy laws, their focus is on what is actually 'on file' and oral reports would not come under their radar. Also absent in the EUWP guidelines is comment on whether whistleblowing is a right or a duty. One explanation is that they found the issue so obvious that they did not feel the need to explain it.

There are also two omissions in the ICC guidance. One is on the issue of involving trade unions or other stakeholders. Although this may well reflect the business orientation of this body, we still think the ICC is mistaken in failing to discuss this matter. By way of contrast, the BSI guideline suggests that the implementation of a whistleblowing procedure can only be successful if it genuinely engages people in the organisation. The second gap in the ICC document relates to training. It might be suggested that this is because the ICC views the provision of training as a natural implementation step or it regards the introduction of whistleblowing policies/procedures only as a matter of compliance with corporate governance laws. In that case, the absence of comment about training is unfortunate because compliance mode thinking is not an appropriate approach to making whistleblowing procedures work.

As regards the availability of advice to potential whistleblowers (table 1 point 13), the BSI, COER and TI offer guidance whereas the others do not. One possible explanation is that those drafting these documents regarded the provision of advice as an important pre-requisite to the successful implementation of whistleblowing legislation but not of organisational procedures. We regard the provision of independent advice as a vital requirement for making procedures work and would argue that the failure of guidelines to discuss this matter is a serious omission. Related to this is the question of access to counselling. Many employers recognise that it may well be in their own interest to provide helplines and procedures

frequently refer to the services offered by Public Concern at Work. Perhaps more contentious is whether reference should be made in whistleblowing policies/ procedures to the availability of either union or legal advice.

This brings us to a third set of omissions where there is no immediately identifiable pattern. The first is the importance of providing recipients of concerns at several levels within and outside of the organisation. The EUWP and ICC guidelines are silent in this respect. Since we do not regard the matter as purely one of common sense, we are forced to the conclusion that the gap is the result of error. In addition to the BSI, many employers believe that it is appropriate for concerns to be raised initially with the line manager but that there must also be readily available alternatives.[6] This is not only because the line manager might be suspected of participating in wrongdoing but also to allow a worker to pursue the matter internally if he or she is not satisfied with the line manager's response. Good practice might well be to allow individuals to go directly to the organisation's chief executive in exceptional circumstances and certainly to have access to that person if lower tiers of management do not appear to have dealt adequately with the information disclosed. Critical to this is the provision of timely feedback, since if people are not kept informed about the progress of any investigation they may well assume that their concerns are not being properly addressed.[7] Indeed, it might be argued that it is useful to communicate generally the outcome of investigations in order to encourage people to raise concerns. Given that in the UK, Part IVA ERA 1996 protects external disclosures in specified circumstances, employers would be well

[6] BSI proposes two internal levels as alternatives. "At the second tier, it might be one or more trusted individuals, the key specialist functions, or divisional or regional managers. At the top level, it could be an internal hotline or the Finance Director, the Group lawyer and/or a non-executive Director." By way of contrast, Bowers, Fodder, Lewis, & Mitchell (2007) suggests a separate dedicated unit as an alternative to line managers.

[7] Although the BSI is of the view that time limits are unlikely to be appropriate, some employers find it helpful to have time estimates for each stage of the procedure.

advised to indicate the kinds of outside body that they feel it might be appropriate to contact, for example, an industry regulator, the police or local M.P.

The second area where there are gaps in the guidelines is the provision of rewards for whistleblowing. This is the case in respect of the COER, EUWP and ICC, although for two of them their position is implied from their approach to other issues. The COER is very clear that the whistleblower should not be pursuing unethical objectives and offering a reward as an incentive to raise concerns would be questionable in this respect. The EUWP approach on advertising schemes implicitly suggests offering rewards is a bridge too far. Furthermore, we can speculate that its position on storing whistleblowing data would make it quite hard to offer rewards. This would require storage of data about who received the reward, its amount and for what specific reason. As this constitutes financial data, it must be stored for a period which is longer than that necessary to investigate and rectify occurring wrongdoing. However there is no ready explanation for the issue not being addressed in the ICC guidelines. Given that offering rewards to whistleblowers is currently in practice only in the US, we can assume that the ICC regarded this issue as not important for its target group. We recommend that guidelines for the management of whistleblowing should take an explicit stance on the issue of rewards.

The third issue where a gap was found but no clear pattern emerged is the roles and responsibilities of key players. The COER is the only body guilty of this omission and because it is largely concerned to urge member states (as well as its own institution) to introduce legislation, it is possible that it felt that specifying roles was not critical as this stage.

The final area in which some guidelines have gaps but there is no discernable pattern is the monitoring and review of whistleblowing procedures. The EUWP as well as the ICC

guidelines are silent in this respect. If those drafting these documents thought their position on this logically followed from their approach to the key players (i.e. that the key players ought to monitor), then a quick look at the other guidelines shows that these two aspects are not necessarily related. Thus, in our view, it is unfortunate that both the EUWP and ICC did not explicitly provide guidance about who should be involved in reviewing and improving whistleblowing policies/procedures.

SECTION 5: CONCLUSION

We feel that our comparison of the various guidelines has been revealing. While identifying areas of consensus and convergence, we have also discovered contradictions and omissions. Given the different purposes for which the guidance has been produced, perhaps we should not be too surprised that there is no uniformity of approach in these documents. Equally, in the light of the empirical research and other published material available to the various drafting bodies, it is rather disappointing that there are some serious omissions in relation to crucial aspects of the management of whistleblowing. Indeed, it does not seem unfair to conclude that, perhaps with the exception of the BSI, the authors of the guidelines seem to have fallen into the trap of focussing on the whistleblower rather than the process of handling his or her concerns. In a way this is understandable because historically much attention has been paid to the individual who discloses information about wrongdoing rather than how management should respond. However, given that many countries now have whistleblowing legislation in place, and that the implementation of internal whistleblowing policies/procedures is increasingly mentioned in corporate governance codes, there is an urgent need to concentrate on the process rather than the person.

Finally, in assessing how to react to the guidance that now exists on the contents of whistleblowing policies/procedures, employers should also consider the impact of anti-corruption legislation. In the UK for example, the Bribery Act 2010 Section 7 makes the failure by a commercial organisation to prevent bribery a criminal offence but it is a defence to prove that there were in place "adequate procedures designed to prevent persons...undertaking such conduct". Section 9 imposes a duty on the Secretary of State to publish guidance about procedures that can be put in place and a consultation paper has been circulated by the Ministry of Justice.[8] In our opinion, a key question for employers is whether to have in place an anti-corruption policy/procedure alongside a general whistleblowing policy/procedure. An alternative view would be that there is a danger of procedural overload and that all wrongdoing should be reported through the same channel on the basis that the recipient of concerns will be trained to refer them to an appropriate person for investigation .To some extent the answer will obviously depend on the nature of the official guidance that is eventually provided by the relevant authority in a particular state (for the UK that is the Secretary of State), but employers would be well advised to consider the general issue of procedural overlap. For some time now empirical research has suggested that whistleblowing procedures are already being used where grievance, health and safety and equal opportunity procedures etc would seem to be more appropriate (Lewis, 2006; Lewis & Kender 2010). There could be many reasons for this, including the absence of a specialised procedure, the fact that it is perceived to be ineffective, or that it has been invoked but failed to satisfy a particular individual. It could also be argued that other procedures are not taken as seriously and that employers respond more carefully when the whistleblowing procedure is invoked because of compliance concerns and the fear of external disclosures. Whatever the causes, it cannot be in anyone's interest to have confusion about how concerns should be raised so we

[8] CP11/10

would urge employers to think carefully about both the contents of whistleblowing policies/procedures and their relationship to other workplace procedures.

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Category	COER	TI	EUWP	BSI	ICC	Status
1. For who?	Broad Includes journalist sources	Broad	Limited	Broad Should not include members of public or consumers	Broad Includes customers	Incompatible
2. About what?	Broad	Broad	Issue must be serious enough (financial malpractice)	Broad	Broad	Convergence, except EUWP incompatible
3. Several tiers to raise concerns?	Internal whistleblowing first, bypassing hierarchy, but external must be possible	Safe internal procedures, easy external (also to media)		External disclosure routes must be identified. This will encourage managers to take internally raised concerns seriously.		Consensus
4. In-house or out-house?			Both are acceptable	Both are acceptable	Both are acceptable	Consensus
5. Report mode				Encourage verbal mode	Individual enterprise can decide preference	Incompatible
6. Confidentiality/ anonymity	Stresses importance of confidentiality; no mention made of anonymous routes	Both must be available	Schemes should not advertise anonymous reports but these should be accepted	Encourage raising concerns openly, confidential must be available, advises against anonymous reports	Individual enterprise can decide either	Convergence
7. Recording reports			Keep personal data separate from complaint reports (no unnecessary storage of personal data)	Only those receiving whistleblower reports outside of hierarchical should log them centrally	All reports must be acknowledged, reported and screened	Incompatible
8. Right / duty				Advises against making it a general requirement to blow the whistle	Individual enterprise can decide either	Incompatible
9. Protection & reprisals	Emphasise importance of adequate protection to whistleblowers; retaliators must be exposable to counter-claims	Emphasise importance of adequate protection to whistleblowers	Emphasise importance of adequate protection both to whistleblowers and accused persons	Emphasise importance of adequate protection to whistleblowers	Emphasise importance of adequate protection both to whistleblowers and accused persons	Convergence
10. Good faith &	Knowingly false reports subject to	Knowingly false reports subject to	Identity may be disclosed when making knowingly	Knowingly false reports subject to disciplinary	Knowingly false reports subject to	Convergence on

malicious reports	disciplinary action. Must have honest believe information is true, and not pursue unlawful or unethical objectives	disciplinary action. Must have honest believe information is true, regardless of motive	false reports.	action.	disciplinary action.	knowingly false reports, incompatible on role of motive
11. Rewards		Use of rewards to encourage whistle-blowing depends on context		Advises against reward policy, rather rewards can be given upon discretion of the board		Incompatible
12. Involving trade unions / stake-holders			National data protection authorities must rubber stamp the policy	Consult on arrangements with staff, managers, and any recognised union		Convergence
13. Advice	NGOs can contribute to the general attitude to whistleblowing, and to providing advice to employers and employees on whistleblowing	A public body should be in place providing general public advice on matters relating to whistleblowing		Independent, confidential advice should be available for employees		Consensus
14. Roles and responsibilities of key players		Independent body receives and handles complaints about retaliation	Specialised staff (independent from HR) receives and handles whistleblower reports	Every manager must be involved	High level personnel must be supervising policy	Incompatible
15. Monitoring & review	Independent body must monitor and review	Involve stakeholders		Involve staff, managers and unions		Convergence
16. Training			Train specialised unit	Brief all managers on how to handle cases, additional training for those with specific roles		Incompatible

Table 1. Relevant elements in five guidelines on whistleblowing

*Page containing all authors contact details

THE CONTENT OF WHISTLEBLOWING PROCEDURES: A CRITICAL REVIEW OF RECENT OFFICIAL GUIDELINES.

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ABSTRACT

There is an increasing recognition of the need to provide ways for people to raise concerns about suspected wrongdoing by promoting internal policies and procedures which offer proper safeguards to actual and potential whistleblowers. Many organisations in both the public and private sectors now have such measures and these display a wide variety of operating modalities: in-house or outsourced, anonymous/confidential/ identified, multi or single tiered, specified or open subject matter etc. As a result of this development, a number of guidelines and policy documents have been produced by authoritative bodies. This article reviews the following five documents from a management perspective, the first two deal with the principles upon which legislation might be based and the others describing good management practice: the Council of Europe Resolution 1729 (COER); Transparency International 'Recommended Principles for Whistleblowing Legislation' (TI); European Union Article 29 Data Protection Working Party Opinion (EUWP); International Chamber of Commerce 'Guidelines on Whistleblowing' (ICC); and the British Standards Institute 'Whistleblowing arrangements Code of Practice 2008 (BSI).